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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

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9 Kelly Luckadoo,) No. CV 09-518-PHX -MHM (DKD)

10 Petitioner,) **ORDER**

11 vs.)

12)

13 Berry Larson, et al.,)

14 Respondents.)

15 _____)

16 Petitioner Kelly Luckadoo, who is represented by attorneys Anders V. Rosenquist, Jr.

17 and Florence M. Bruemmer, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C.

18 § 2254 and subsequently filed an Amended Petition (Doc. #2). He has paid the \$5.00 filing

19 fee. The Court will require an answer to the Amended Petition.

20 **I. Amended Petition**

21 Petitioner challenges his murder conviction in Maricopa County Superior Court, case

22 #CR 1988-010299. Petitioner names Warden Berry Larson as Respondent to the Amended

23 Petition and the Arizona Attorney General as an Additional Respondent.

24 Petitioner raises three grounds for relief:

- 25 (1) “Newly discovered material requires the court to vacate Petitioner’s conviction
- 26 because without presentation of the newly discovered evidence, Petitioner did
- 27 not receive a fair trial and his conviction was obtained in violation of his due
- 28 process rights guaranteed by the Fifth and Fourteenth Amendments”;

- (2) “Petitioner was denied effective assistance of counsel in violation of the Sixth, Fifth, and Fourteenth Amendments of the United States Constitution because his counsel failed to uncover evidence critical to the self-defense claim”; and
- (3) “Prosecutorial misconduct of using unreliable evidence was instrumental in the defense’s inability to present evidence of self-defense in violation of Petitioner’s right to due process & a fair trial guaranteed by the Fifth & Fourteenth Amendments of the United States Constitution.”

The Court will require Respondents to answer the Amended Petition. 28 U.S.C. § 2254(a).

IT IS ORDERED:

(1) The Clerk of Court must serve a copy of the Amended Petition (Doc. #2) and this Order on the Respondent and the Attorney General of the State of Arizona by certified mail pursuant to Rule 4, Rules Governing Section 2254 Cases.

(2) Respondents must answer the Amended Petition within 40 days of the date of service. Respondents must not file a dispositive motion in place of an answer but may file an answer limited to relevant affirmative defenses, including but not limited to, statute of limitations, procedural bar, or non-retroactivity. If the answer is limited to affirmative defenses, only those portions of the record relevant to those defenses need be attached to the answer. Failure to set forth an affirmative defense in an answer may be treated as a waiver of the defense. Day v. McDonough, 126 S. Ct. 1675, 1684 (2006). If not limited to affirmative defenses, the answer must fully comply with all of the requirements of Rule 5 of the Rules Governing Section 2254 Cases.

(3) Petitioner may file a reply within 30 days from the date of service of the answer.

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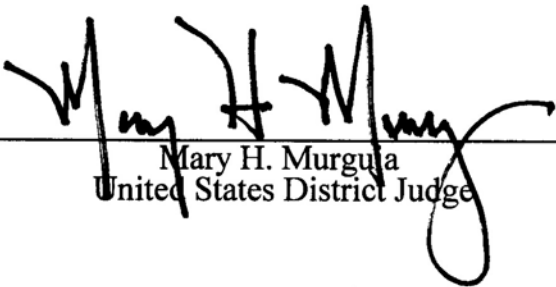
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1 (4) This matter is referred to Magistrate Judge David K. Duncan pursuant to Rules
2 72.1 and 72.2 of the Local Rules of Civil Procedure for further proceedings and a report and
3 recommendation.

4 DATED this 13th day of April, 2009.

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Mary H. Murgula
United States District Judge